IN THE HIGH COURT OF BOMBAY AT GOA

Civil Revision Application No.302 of 2000 and Civil Revision Application No.318 of 2000.

CIVIL REVISION APPLICATION NO.302 OF 2000

Smt. Prabhavati Madhu Chopdekar,
major in age, widow of late
Madeu Chopdekar, resident of
House No.171, Kharviwadd,
Vasco-da-Gama, Mormugao.....PETITIONER

VERSUS

M/s Alcon Real Estates Pvt.Ltd.
a company incorporated under
the Indian Companies Act,
First Floor, Velho Building,
Panaji, Goa .....RESPONDENT

Shri V.P. Thali, Advocate for the Petitioner.

Shri S.S. Kantak with Smt. Gauri Sardessai, Advocates for the Respondent.

CIVIL REVISION APPLICATION NO.318 OF 2000

M/s Alcon Real Estate Pvt. Ltd.
a Company incorporated under the
Indian Companies Act, First Floor,
Velho Building,
Panaji-Goa.....PETITIONER

VERSUS

1. Smt.Prabhavati Madhu
   Chopdekar, major in age,
   r/o H.No.171,Kharavivadda,
   Vasco-da-Gama,Mormugao
   Taluka, Goa, presently at
   P.O. Betim,Britona,
   Bardez-Goa;

2. Shri Jaiwant Chowgule,
   resident of Chicalim,
   Vasco-da-Gama (Mormugao
   Taluka), Goa;

3. Smt. Sheela Yeshwantrao

Chowgule, Trust No.II,
represented by its Manager
Trustee, Shri Yeshwantrao
Chowgule,
C/o Pradeep Mahatme,
Gambar, Vasco-da-Gam,Goa;

4. Smt. Ruchikar J. Chowgule,
r/o Vasco-da-Gama,Goa.....RESPONDENTS.

Shri S.S. Kantak, with Smt. Gauri Sardessai, Advocates for the Petitioner.

Shri V.P. Thali, Advocate for the Respondent No.1.

CORAM : S. RADHAKRISHNAN,J.

DATED : AUGUST 23, 2002.

ORAL JUDGMENT

Both the Civil Revision Applications have been filed against the same Order by both the parties. As such, I am disposing both the Civil Revision Applications by this common Order. Both the Applicants in the above Civil Revision Applications have challenged the Order dated 18th August, 2000 passed by the learned Civil Judge, Senior Division, Vasco-da-Gama.

2. The brief facts are that one Smt. Prabhavati Madhu Chopdekar had filed a suit seeking the relief of declaration, mandatory injunction, permanent injunction, compensation, etc. Ultimately, the said suit was compromised by entering into consent terms. Accordingly, a decree

was passed on 27th June, 1991. As per the consent decree, the Respondent M/s Alcon Real Estate Pvt. Ltd. had agreed to pay a sum of Rs.1,10,000/- to the Petitioner Smt. Prabhavati which amount was actually paid by Pay Order dated 24th June 1991. As per the said consent terms, M/s Alcon Real Estate Pvt.Ltd. had also agreed to provide three flats to Petitioner free of cost. Two of those flats were to be on the first floor admeasuring 50 square metres and the third flat admeasuring 45 square metres,was to be on the second floor. The said consent decree had also mentioned that the value of the aforesaid three flats would be Rs.7,50,000/-. The following two provisions of the said consent decree would be relevant for the purpose of deciding these two Civil Revision Applications. The said two Clauses read as under:-

> " B. That the value of the three flats is Rs.7,50,000/- (Rupees seven lakhs fifty thousand only) and the same shall be handed over to the plaintiff by the Defendant No.2 within eighteen months from today failing which the said Defendant No.2 shall pay to the

plaintiff interest on the said amount of Rs.7,50,000/- (Rupees seven lakhs fifty thousand only) at the rate of 18% per annum till the flats are handed over to the plaintiff. In the event the defendant No.2 is not able to deliver the possession of the said flats within the said period of eighteen months on account of the factors beyond their control, the defendant No.2 shall be entitled to an extension of further maximum period of six months.

C. That the plaintiff shall make all the necessary application required to be filed before any authorities for the purpose of going ahead with the proposed construction work undertaken by the defendants."

3. As per the aforesaid terms in the said consent decree, the said M/s Alcon Real Estate

Pvt. Ltd. had agreed that within a period of 18 months from the date of the decree, i.e. 27th June, 1991, the aforesaid three flats would be handed over to the Petitioner failing which the said M/s Alcon Estate Pvt. Ltd., had agreed to pay interest on the said sum of Rs.7,50,000/- till the aforesaid flats are handed over to the Petitioner. It may be noted that in the aforesaid Clauses, it is also mentioned that in the event M/s Alcon Real Estate Pvt. Ltd. is unable to deliver the aforesaid three flats within a period of 18 months on account of factors beyond their control, the said M/s Alcon Real Estate Pvt. Ltd. would be entitled to an extension of a further period of maximum period of six months.

4. As the said M/s Alcon Real Estate Pvt. Ltd. did not hand over possession of the three flats, in the Execution Application before the learned Civil Judge, Senior Division, which came to be disposed of by the impugned Order dated 18th August,2000, the learned Civil Judge, Senior Division, Vasco-da-Gama has passed the following Order in the aforesaid Execution Application:-

> "The judgment debtor no.2 is directed to give possession of the three flats as agreed by consent

terms dated 27.6.91 to the decree holder and after rectifying the defects as pointed out by the commissioner and by repainting the same. Further the judgment debtor no.2 is also directed to pay interest from 27.6.91 till 3.11.93 at the rate of 18% p.a. on sum of Rs.7,50,000/-. The possession of flats and payment of interest has to be made within a period of 45 days from today. "

5. The Petitioner in Civil Revision Application No.302 of 2000, Smt. Prabhavati Madhu Chopdekar, challenges this Order contending that the Petitioner is entitled to interest upto the date of actual possession being given as per the said consent decree and not interest only upto 3rd November 1993 as awarded by the Executing Court. On the contrary, the said M/s Alcon Real Estate Pvt. Ltd. has challenged the impugned Order on the ground that they are not liable to pay any interest whatsoever on the said sum of Rs.7,50,000/- inasmuch as the said M/s Alcon Real Estate Pvt. Ltd. was not at fault and if at all there was a delay in handing over possession of the said flat, it was

entirely due to the fault of Smt. Prabhavati.

6. Some of the facts relevant for deciding both the above Civil Revision Applications would be as under:-

7. The Planning and Development Authority had issued the No Objection Certificate for construction of the building on 21st December 1989. Thereafter it appears that Mormugao Municipal Council had issued a construction licence in favour of the said M/s Alcon Real Estate Pvt. Ltd. on payment of fee of Rs.55,397/- for a period of one year. On 20th of June 1990 the said Smt. Prabhavati had filed the aforesaid Suit No.84 of 1990 against M/s Alcon Real Estate Pvt. Ltd. and others for a declaration and injunction. In the said suit, on 22nd June, 1990 the trial Court had granted an injunction restraining M/s Alcon Real Estate Pvt. Ltd. from carrying on any construction on the site. It appears that on the basis of a complaint made by Smt. Prabhavati, the Planning and Development Authority issued a show cause notice to M/s Alcon Real Estate Pvt. Ltd. to show cause why the NOC granted in their favour should not be revoked. Thereafter, on 12th March, 1991, the Municipal licence expired as the validity thereof

was only for a period of one year and the said licence could not be renewed in view of the fact that a show cause notice was issued by the Planning and Development Authority and also in view of the injunction granted by the trial Court on 22nd June,1990 not to carry on any construction. On 3rd May, 1991, the NOC granted by the Planning and Development Authority was revoked.

8. Subsequent thereto, the parties herein had arrived at certain compromise terms and a decree was passed on 27th June,1991 as indicated hereinabove. After the said consent decree was passed, on 31st October,1991, the Planning and Development Authority had revoked the withdrawal of NOC granted earlier and a copy of the same was endorsed by the Planning and Development Authority to the Mormugao Municipal Council. Subsequently, the Mormugao Municipal Council had issued a licence for construction on 3rd November,1993 and the said M/s Alcon Real Estate Pvt. Ltd. had completed the construction and obtained Occupancy Certificate on 9th June,1995. It appears that after the said Occupancy Certificate was issued on 9th June 1995, there has been some correspondence between the parties with regard to handing over possession of the said flats and Smt. Prabhavati had declined to

take possession on the ground that there were a number of defects in the said flats and unless the same were rectified the said Smt. Prabhavati could not take possession of those flats. In fact, during the execution proceedings, a commissioner was appointed to find out the defects,and ultimately, by the impugned Order, the Executing Court had directed the said M/s Alcon Real Estate Pvt. Ltd. to rectify the defects as pointed ;out by the commissioner and had also directed the said M/s Alcon Real Estate Pvt. Ltd. to pay interest at the rate of 18% on Rs.7,50,000/-, from 27th June 1991 till 3rd November,1993.

9. Shri Thali, the learned Counsel appearing for the Petitioner in Civil Revision Application No.302 of 2000, pointed out that there are two periods with regard to computation of interest in the above matter, namely, right from the date of decree i.e. 27th June,1991 till the Occupancy Certificate was issued on 9th June, 1995. The second period would be subsequent to the issuance of Occupancy Certificate was issued on 9th June,1995 till the possession of the three flats were handed over to the aid Smt. Prabhavati Chopdekar on 31st January,2001.

10. In the above context, with the consent of both the parties, additional correspondence which was entered into between the parties was also gone into so as to justify their respective contentions. Those documents are considered with the consent of both the parties. Shri Thali, the learned Counsel appearing for the Petitioner Smt. Prabhavati, contended that the aforesaid Clauses in the consent decree dated 19th June,1991 clearly indicate that within a period of 18 months, the said M/s Alcon Real Estate Pvt. Ltd. was to hand over vacant and peaceful possession of the three flats as mentioned hereinabove and on its failure to do so, M/s Alcon Real Estate Pvt.Ltd. was liable to pay interest at the rate of 18% per annum on Rs.7,50,000/- upto the date of handing over the possession. Shri Thali contended that the period of 18 months expired from the date of decree on 26th December,1992. Therefore, according to Mr.Thali, the said Smt. Prabhavati is entitled to interest from 26th December 1992 till 31st January 2001 as per the explicit terms in the consent decree. Shri Thali fairly stated that the Order passed by the Civil Judge, Senior Division directing interest from 27th June,1991 cannot be sustained. At the most, it could only be from 26th December, 1992 and not from 27th June,1991 since the consent

terms clearly indicate that in the event the said M/s Alcon Real Estate Pvt.Ltd. took time beyond eighteen months to hand over possession of the said flats, it would be entitled to an extension of a further maximum period of six months.

11. Mr. Thali took me through all the correspondence and the record to emphasize that there is no default on the part of the Petitioner in complying with the terms of the consent decree and, on the contrary, Smt. Prabhavati had been repeatedly requesting M/s Alcon Real Estate Pvt. Ltd. to hand over possession of the flats without any defect. He also emphasized that, in any event, from 26th December 1992 till 9th June 1995 when the Occupancy Certificate was issued, the said M/s Alcon Real Estate Pvt. Ltd. had to pay the aforesaid agreed interest. Even after the Occupancy Certificate was issued, the said M/s Alcon Real Estate Pvt. Ltd. did not bother to hand over the possession of the above flats as they had various defects which had to be rectified and the Executing Court had to appoint a commissioner in that behalf, who pointed out the defects, and accordingly, the Executing Court had directed the said M/s Alcon Real Estate Pvt. Ltd. to rectify the defects and hand over possession of the said flats.

12. Shri Thali thereafter took me through all the relevant correspondence pointing out that repeatedly Smt. Prabhavati had been demanding that as per the consent decree, the said M/s Alcon Real Estate Pvt. Ltd. had to give possession of the flats within 18 months failing which M/s Alcon Real Estate Pvt. Ltd. was liable to pay interest at the rate of 18% per annum on the said Rs.7,50,000/- till possession was granted. He also took me through letters pointing out that there were defects in the flats and even when the Court Commissioner was appointed pursuant to the Order passed by the Executing Court, the defects were pointed out to the said M/s Alcon Real Estate Pvt. Ltd. Therefore, the contention of the learned Counsel for the Petitioner is that the Petitioner is not at fault and as such from the aforesaid date 26th December 1992 till 31st January 2001 the said M/s Alcon Real Estate Pvt. Ltd. had to pay interest at the rate of 18% p.a.. Therefore, the learned Counsel for the Petitioner contends that the learned Civil Judge, Senior Division who passed the impugned Order committed an error apparent on the face of the record inasmuch as the record clearly indicated that the Petitioner is entitled to interest from 26th December 1992 to 31st January 2001. On the contrary, the Executing Court has

awarded interest from 27th June 1991 till 3rd November 1993, which was not sustainable.

13. Shri Kantak, the learned Counsel appearing for M/s Alcon Real Estate Pvt. Ltd., strongly contended that his client has been ready and willing to construct the said flats promptly and hand over possession of the same to Smt. Prabhavati. However, the same could not be done as Smt. Prabhavati had complained to the Planning and Development Authority. As such the NOC was revoked and the Municipal licence for construction could not be renewed. Shri Kantak laid great emphasis on Clause C) of the Consent Decree which says that the plaintiff shall make all necessary applications required to be filed before any authority for the purpose of giving effect for the proposed construction work of the building. The learned Counsel therefore submitted that it was Smt. Prabhavati who should have approached all the authorities concerned with the necessary applications for the purpose of construction undertaken by M/s Alcon Real Estate Pvt. Ltd. Shri Kantak, therefore, submitted that the Petitioner Smt. Prabhavati had failed to make the make necessary applications. Therefore, there was a delay in executing the construction and handing over

possession. Shri Kantak therefore contended that the revocation of NOC by the Planning and Development Authority was due to the complaint filed by the said Smt. Prabhavati. Similarly, the injunction was granted by the trial Court and also in view of the non-renewal of the NOC and the withdrawal of the NOC by the Planning and Development Authority, the Mormugao Municipal Council declined to grant the Municipal licence. Shri Kantak strongly pointed out that within a period of 20 months from the date of obtaining necessary permission and licence after the consent decree, the construction was completed and only Prabhavati did not take possession of the said flats pointing out certain defects etc. Shri Kantak contended that the said Prabhavati could have taken possession of the flats and by not taking possession of the flats cannot blame M/s Alcon Real Estate Pvt. Ltd. to pay interest for the delay. Under these circumstances, Shri Kantak contended that the correspondence is very clear that Smt. Prabhavati was at fault in not taking possession of the flats in time when the Occupancy Certificate was issued and she was duly informed of the same by various letters as referred to above. Shri kantak contended that Smt. Prabhavati's not taking possession was due to her own fault and hence she could not claim

interest.

14. After having heard both the learned Counsel at length, and after perusing the correspondence and the record, the following facts are clear: that the liability to pay interest would arise only after the expiry of 18 months from the date of the decree i.e. 26th December 1992. On this issue there is no dispute that there is only liability to grant interest from 26th December 1992 and not from 27th June 1991 as awarded by the Civil Judge, Senior Division in the aforesaid Execution Application. From the various letters it is clear that at no point of time M/s Alcon Real Estate Pvt. Ltd. asked the said Smt. Prabhavati to apply to any authority for permission or licence. It appears that everything was got done by M/s Alcon Real Estate Pvt. Ltd. on its own under the consent decree. The correspondence does not indicate that at any point of time M/s Alcon Real Estate Pvt. Ltd. had requested Smt. Prabhavati to sign any documents etc. so as to enable M/s Alcon Real Estate Pvt. Ltd. to proceed with the construction. This appears to be an afterthought. The terms in the consent decree are very clear. The liability arises on the expiry of 18 months, i.e. on 26th of December 1992. Merely because Occupancy Certificate

was issued, it does not mean that Smt. Prabhavati should be asked to occupy the said flats, which admittedly had defects. It is clear from the record that there were construction defects in the said flats, in view whereof the Executing Court had to appoint a Court Commissioner whereby the Executing Court had directed M/s Alcon Real Estate Pvt. Ltd. to rectify the said defects and hand over possession of the said flats. Ultimately, during the pendency of both the Civil Revision Applications here in this Court, possession was handed over on 31st January 2001 after rectifying the aforesaid defects.

15. From the aforesaid Clause B) in the Consent Decree, the liability of M/s Alcon Real Estate Pvt. Ltd. arises from the time 18 months had expired and therefore the demand of the Applicant Smt. Prabhavati demanding interest from 26th December 1992 till 31st January 2001 appears to be fully justified. In fact, M/s Alcon Real Estate Pvt. Ltd. was unable to point out that at any point of time they had made any demand on the Applicant to make any application so as to enable the said M/s Alcon Real Estate Pvt. Ltd to proceed with the construction. There was no such demand made. Therefore from 26th December 1992 till the Occupancy Certificate was issued on 9th June 1995 it

was entirely the obligation on the part of M/s Alcon Real Estate Pvt. Ltd. Subsequent to 9th June, 1995 also repeatedly the Applicant had to point out defects in the said flats and even the Executing Court was convinced of the same and had to appoint a Court Commissioner and finally directed the said M/s Alcon Real Estate Pvt. Ltd. to rectify those defects and hand over the flats to the Applicant Smt. Prabhavati Chopdekar. In fact, the handing over of the possession of those flats could take place only during the pendency of present proceedings in this Court. Under these circumstances also, it is clear that the liability arising under Clause B) continued till handing over of actual possession of the said flats by M/s Alcon Real Estate Pvt. Ltd. to Smt. Prabhavati Chopdekar. The aforesaid errors are apparent on the face of the record.

16. Under these circumstances, Civil Revision Application No.302 of 2000 is allowed and the Respondent M/s Alcon Real Estate Pvt. Ltd. is directed to pay interest at the rate of 18% per annum from 26th December, 1992 till 31st January,2001, to the Petitioner Smt. Prabhavati Chopdekar.

17. As far as the Civil Revision Application No.318 of 2000 is concerned, in view of the aforesaid reasons, the same does not survive and is dismissed.

S. RADHAKRISHNAN,J.

ac.